IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3231 OF 2006
IN
INCOME TAX APPEAL LODGING NO.1759 OF 2006

The Commissioner of Income Tax....Appellant

Versus

M/s.Birla International P.Ltd...Respondent

Mr. A.S. Rao for the Appellant.
Mrr. P.R. Toprani, for the Respondent.

CORAM : F.I. REBELLO &
R.S. MOHITE, JJ.
DATED : 10TH DECEMBER 2007

P.C.

. There is a delay of 102 days in preferring the Appeal. Earlier considering the administrative difficulties of the Department we were condoning delay upto 200 days on showing cause bearing in mind the law declared by the Supreme Court that Government should be shown some latitude. Since December, 2005 the files are no longer sent to the Law Ministry and the Appeals have to be drafted in Mumbai itself. There is, therefore, no reason as to why the same latitude should now be shown to condone such long delay in preferring the Appeal if otherwise there is no sufficient cause. This exercise was also partly resorted to, considering that over one thousand and five hundred Notice of Motions were pending and in respect of Appeals right from 2001 onwards.

2. We are aware that on the one hand we have to balance the right of the assessee in whose favour a right accrues. At the same time we have also to consider the adverse effect

on the Revenue if these Appeals are dismissed. The figure collected by this Court upto the year 2007 would show that practically in every Appeal (about 2700 Appeals) there is a Motion for condonation of delay. The main reasons that we find are (a) the failure by the Officers of Revenue to process the files in time, (b) the time taken to draft the Appeals including by Advocates of the Department and (c) non-availability of stamp papers. The period for filing the appeal is 120 days and this is known to the Revenue Officials.

3. In so far as Officers of the Department, knowing that the time for appeal is 120 days from receipt of order of ITAT there is no reason why the file should not be processed within sixty days. In so far as delay by Advocates, in some cases upto six months for drafting appeal memos, the same is inexcusable, on the touch stone of sufficient cause. In so far as stamp papers are concerned, taking the number of appeals filed each year, adequate steps should be taken to sanction the moneys for filing appeals in time. We make it clear that from 2008 onwards the Revenue, if they file applications for condonation of delay, will have to explain each days delay.

4. Considering the facts and circumstances of the case and the cause shown the delay of 202 days is condoned subject to the Appellants paying to the Respondents costs quantified at Rs.2,500/-. The said costs to be recovered from the officers responsible for the delay. We see no reason why the State should be burdened with the costs. The

receipt of payment of costs to be filed in the Appeal proceedings within four weeks from today. Motion made absolute accordingly. Office to register the appeal.

. It is essential that these observations are complied with and Officers responsible for delay in preferring Appeals, must be held accountable. A copy of this order be forwarded to the Chairman of Central Board of Direct Taxes for necessary action.

(R.S.MOHITE, J.) **(F.I. REBELLO, J)**